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TITLE PAGE

AGREEMENT NAME: NEW WORLD ALLIANCE/EVERGREEN SLOT  
EXCHANGE AGREEMENT

FMC NUMBER: 011756-001 (Second Edition)

CLASSIFICATION: Space Charter and Sailing Agreement

DATE LAST REPUBLISHED: This Agreement is republished herein.

EXPIRATION DATE: See Article 9.



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**ARTICLE 1. NAME OF AGREEMENT**

This Agreement shall be known as the "New World Alliance / Evergreen Slot Exchange Agreement" (hereinafter the "Agreement").

**ARTICLE 2. PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to permit the Parties hereto to obtain optimum efficiency of fleet operations and to maximize space utilization with regard to the trade covered herein so as to offer efficient, competitive services to the shipping public.

**ARTICLE 3. PARTIES**

The Parties hereto are:

- (1) APL Co. Pte. Ltd. and American President Lines, Ltd. (hereinafter collectively referred to as "APL"),
- (2) Evergreen Marine Corp. (Taiwan) LTD. ("EMC"),
- (3) Hyundai Merchant Marine Co. Ltd. ("HMM"), and
- (4) Mitsui O.S.K. Lines, Ltd. ("MOL").

APL, HMM and MOL are referred to collectively as The New World Alliance ("TNWA").

**ARTICLE 4. GEOGRAPHIC SCOPE**

A. The geographic scope of this Agreement shall extend to and from ports on the East Coast and West Coast of the United States, and inland and coastal points in the United

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States served via such ports, on the one hand, and ports in the Far East (including, Japan, Korea, Taiwan, and China including Hong Kong) and Panama, and inland and coastal points served via such ports, on the other hand (hereinafter the "Trade").

B. It is understood that the parties may use ships, slot allocations and administrative procedures subject to this Agreement to serve trades that extend solely between foreign ports or points. However, this Agreement is not intended to and does not bring any activity for service solely between foreign ports or points within the jurisdiction of the Federal Maritime Commission or the scope of Shipping Act of 1984, as amended ("Shipping Act"), including the antitrust exemption conferred by the Act.

**ARTICLE 5.**        **AGREEMENT AUTHORITY**

A. The Parties may discuss and agree upon the terms and conditions for exchanging, selling and/or allocating space to each other on the vessels subject to this Agreement.

B. The Parties may discuss and agree upon the deployment and utilization of vessels in the Trade up to a maximum of 26 vessels having a maximum average capacity of up to approximately 4500 TEUS per vessel, including, without limitation, the addition, withdrawal and substitution of vessels, sailing schedules, service frequency, ports required to be served, port rotations, type and size of vessels to be utilized, operational responsibilities of various parties, number and type of slots to be exchanged, feeder arrangements, including the sale or exchange of feeder slots between them, the addition or withdrawal of capacity from the Trade, and the terms and conditions of any such addition or withdrawal.

C. Without limiting the authority granted in this Article 5, the parties agree that:

1. Initially, the following vessel strings shall be subject to this Agreement:

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a. EMC's NUE Service: EMC's string of up to 13 vessels with an average capacity per sailing of approximately 4200 TEUS, operating in a pendulum service that calls insofar as is relevant to this agreement the Far East and the U.S. East Coast and U.S. West Coast.

b. TNWA's ECS2 Service: TNWA's string of up to 9 vessels with an average capacity per sailing of approximately 3500 TEUS, operating between the Far East and the U.S. East Coast pursuant to FMC Agreement No. 011623.

2. Initially, slots will be purchased or exchanged on the above-mentioned strings as follows:

a. EMC's NUE Service (i) The individual members of TNWA will purchase or exchange from EMC slots aggregating approximately 250 dry TEUS per sailing on used and unused basis, in each direction, between the Far East and the U.S. East Coast. EMC will guarantee the availability of such slots. The allocation of slots among TNWA members will be made by TNWA pursuant to Article 6

b. TNWA's ECS2 Service: EMC will purchase or exchange from individual members of TNWA slots aggregating approximately 250 dry TEUS per sailing on used and unused basis, in each direction, between the Far East and the U.S. East Coast. The members of TNWA will guarantee the availability of such slots. The number of slots to be made available by particular TNWA members will be decided by TNWA pursuant to Article 6

c. The above-mentioned TEU numbers may be adjusted as the parties may from time to time agree within a range of plus or minus 50 percent, subject to mutual agreement.

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d. The Parties may sell, purchase or exchange additional slots on the above-mentioned services on an ad hoc basis

D. The Parties may discuss and agree upon matters relating to terminal services and facilities, including with respect to the rates to be paid at particular terminals operated by a Party (or by a Party's contractor) for services and facilities provided to other Parties in connection with cargo moving on vessels subject to this Agreement, and also including the joint and/or individual negotiation and entry into leases, subleases or assignments of such facilities, contracting for stevedoring services, terminal and other related ocean and shoreside services and supplies with each other or, as agreed, individually or jointly with third parties. Nothing herein, however, shall authorize the parties jointly to operate a marine terminal in the United States.

E. The Parties may discuss and agree upon documentation, data systems and computerization and joint communication including any joint negotiations, leasing or contracting related hereto.

F. The Parties may discuss and agree upon administrative, legal and operational matters and related issues, including, but not limited to, operation procedures, accounting procedures, bills of lading, terminal operations, stowage planning, schedule adjustments, recordkeeping, responsibility for loss or damage, change in ownership or insolvency of any Party, the interchange of information and data and the respective rights, liabilities and indemnities of each Party arising under this Agreement, including with respect to matters such as failure to perform, insurance, indemnification, consequences for delays, port omission, port substitution, force majeure relief and treatment of hazardous and dangerous cargoes.

G. The Parties may discuss and agree upon the terms and conditions by which the Parties directly or indirectly, interchange, lease, sublease, return, and may otherwise cooperate

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among or between themselves in connection with containers, chassis and other equipment used in the service.

H. The parties may exercise the authority granted by this Article 5 to discuss and agree on changes to be made from time to time in any of the matters identified in Articles 5.A through 5.G above, except for the maximum number and average capacity of vessels specified in Article 5.B.

I. The Parties may discuss and agree on whether to enter into agreements jointly with third-parties, and/or whether to sell either jointly or separately space on the vessels operated under this Agreement to ocean common carriers not signatories to this Agreement and to share or allocate any revenues received therefrom, on such terms, rates and conditions as the Parties may from time to time agree. Any agreement entered into pursuant to this subparagraph with an ocean common carrier not party to this Agreement shall be filed with the Federal Maritime Commission in accordance with the requirements of the Shipping Act.

J. Each Party shall retain its own separate identity and shall have separate sales, pricing and marketing functions. Each Party will issue its own bills of lading, handle its own claims and shall be fully responsible for the expenses, husbandry and operation of its owned or chartered vessel(s) operated in the Trade, including drydocking, special survey and future capital improvements. Additionally, each Party shall be fully responsible for any and all terminal costs attributable to cargo moved on its own bill of lading.

K. The Parties are authorized to make and enter into implementing and interstitial arrangements, writings, oral and written communications, understandings, procedures and documents within the scope of the authorities set forth in this Agreement in order to carry out the authorities and purpose hereof.

L. This Agreement shall not require a common position on conference membership. Any of the Parties is free to operate inside or outside conferences in the Trade.

M. Pursuant to 46 C.F. R. 535.407, any further non-exempt agreement between the Parties cannot take effect unless filed and effective under the Shipping Act of 1984, as amended, except to the extent that such agreement concerns routine operational or administrative matters.

N. No Party shall assign, space charter, or sub-space charter any slots it has obtained from another Party under this Agreement to any third-parties in the Trade that are not subject to this Agreement, without obtaining prior written consent from the operator of the relevant service.

**ARTICLE 6. RELATIONSHIPS AMONG THE PARTIES; ADMINISTRATION**

A. The Parties undertake the rights and obligations under this Agreement individually, and are individually responsible to each other for their obligations under this Agreement. TNWA, as such, is not a party to this Agreement.

B. For administrative convenience, rights (including slot allocations) and obligations (including obligations to provide slots and pay for slots) under this Agreement may be stated as applying to EMC on the one hand and TNWA on the other hand. In such cases, the TNWA members shall allocate such rights and obligations among themselves. Initially, slots to be purchased from EMC will be allocated among the TNWA members as follows: APL -- approximately 125 TEUS; MOL -- approximately 125 TEUS; HMM -- approximately 0 TEUS.

These numbers may be adjusted as the TNWA members may from time to time agree. Unused slots may be sold or exchanged among TNWA member on an ad hoc basis for particular voyages. Initially, slots to be sold to EMC will be provided by the TNWA members as follows: APL -- 125 TEUS; MOL -- 125 TEUS; HMM 0 TEUS. These numbers may be adjusted as the TNWA members may from time to time agree, with advance notice to EMC. Individual TNWA members allocated rights and obligations in this manner are individually responsible to EMC for such matters, and EMC is responsible to them individually.



C. The Parties may agree to administrative and accounting procedures and methods under this Agreement as they may deem appropriate, including procedures and methods whereby one TNWA member (selected by TNWA) serves as the contact point for various types of communications and dealings between EMC and TNWA members.

D. The members of TNWA, or any combination of them, are authorized to discuss and agree on, and to develop joint positions and make joint decisions with respect to, any and all matters relating to the implementation of this Agreement and to the actions and decisions of any TNWA member pursuant to this Agreement. This includes all matters within the scope of Article 5 and all matters relating to rights and obligations that may be stated, pursuant to paragraph 6.B above, as applying to TNWA with respect to dealings with EMC under this Agreement. In making such agreements and decisions, the TNWA parties shall be governed by the procedures in Article 8 (Voting) of FMC Agreement no. 011618 with respect to matters relating to the trades to/from the U.S. west coast, and by the procedures in Article 8 (Voting) of FMC Agreement no. 011623 with respect to matters relating to the trades to/from the U.S. east coast.

E. Nothing in this Agreement derogates from the authorities and rights of the TNWA Parties under FMC Agreement nos. 011618 and 011623.

F. This Agreement shall be administered and implemented by such meetings, decisions, memoranda, procedures and communications among the Parties, or any combination of them, as are appropriate to enable them to effectuate the purposes of this Agreement.

G. The following individuals shall have the authority to file this Agreement and any modification to this Agreement with the Federal Maritime Commission, as well as the authority to

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delegate the same: (1) Any authorized officer of each of the Parties, and (2) legal counsel for each of the Parties.

**ARTICLE 7. MEMBERSHIP**

Membership in this Agreement is limited to the Parties hereto, except that additional parties may be admitted by unanimous consent of the Parties and by amendment of the Agreement pursuant to the Shipping Act of 1984, as amended.

**ARTICLE 8. VOTING**

Except as provided in Article 6 above, decisions under this Agreement and any amendment to this Agreement shall be by unanimous agreement of the Parties.

**ARTICLE 9. DURATION AND TERMINATION**

A. The effective date of this edition of the Agreement shall be the date it becomes effective under the Shipping Act of 1984.

B. This Agreement shall remain in effect for an initial period of twelve (12) months from the effective date of this edition of this Agreement and, thereafter, shall continue in effect unless it is terminated by any Party upon not less than three (3) months prior written notice. The earliest that such prior written notice can be given is nine (9) months after the effective date of this edition of the Agreement.

C. Notwithstanding the foregoing: (i) The Parties may agree on provisions allowing earlier termination in the event of a change in ownership of a Party, the dissolution, bankruptcy or insolvency of a Party, a change in membership of TNWA, or a similar occurrence. The TNWA Parties will immediately notify EMC in the event of a change in membership of TNWA. (ii) If at

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any time the operator of any service determines, without obtaining consent from all affected Parties, to make long-term changes to the service structure (*e.g.*, changes in deployment, port rotation, material change in transit time, etc.), then any affected Party may, on 90 days written notice, terminate its participation in the Agreement with respect to that service or reduce its slot allocation on that service based on historical volumes. (iii) During the Initial Period, either EMC or TNWA may terminate the Agreement by giving three (3) months prior written notice if it decides to cease operations of its service identified in Article 5.C.1. above or to leave the Trade. The earliest that such prior written notice can be given is six (6) months after the effective date of this edition of the Agreement.

D In the event of default and notwithstanding any termination made in accordance with this Article 9, the non-defaulting Party retains the right to bring a claim against the defaulting Party for any loss and/or damage caused or arising out of such default.

E Any termination or withdrawal hereunder (whether from a particular service or the entire Agreement) shall be without prejudice to the Parties' respective financial obligations to one another as of the date of termination or withdrawal.

F The Parties will promptly notify the Federal Maritime Commission as well as any other relevant governmental authorities of any termination of, or withdrawal from, a particular service or the Agreement.

**ARTICLE 10.**      **FORCE MAJEURE**

A No Party shall be deemed responsible with respect to its failure to perform any term or condition of this Agreement if such failure is due to an event of Force Majeure beyond its reasonable control, such as, but not limited to: war declared or undeclared; hostilities; war-like or belligerent acts or operations; piracy; riots, civil commotion or other disturbances; acts of God;

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blockade of port or place or interdict or prohibition of or restriction on commerce or trading; government action including but not limited to quarantine sanitary or other similar regulations or restrictions; strikes, lock-outs or other labor troubles whether partial or general and whether or not involving employees of any Party; shortage, absence or obstacles of labor or facilities for loading, discharge, delivery or other handling of the goods; epidemics of disease; unforeseeable breakdown or latent defect in the vessels' hull, equipment or machinery; shallow water, ice, landslide or other obstacles in navigation or haulage; any act of barratry; and unusual severe weather which can cause operational hindrance.

B. Any Party claiming an event of Force Majeure beyond its reasonable control shall exercise reasonable endeavors to remedy the consequences of such event. Upon the termination of such Force Majeure event causing a Party's failure to perform its obligations under this Agreement, such Party shall as soon as possible resume its performance of its obligations according to the terms and conditions of this Agreement.

**ARTICLE 11.**      **INSURANCE**

For the duration of this Agreement, all vessel operators undertake to have valid P&I Insurance for all conventional P&I risks with a club being a member of the Group of International P&I clubs. In the event the terms and conditions or the cover in general are materially amended, the respective club shall notify the other Parties hereto without delay.

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**ARTICLE 12. NOTICES**

Any correspondence or notices hereunder shall be made by courier service or registered mail, or in the event expeditious notice is required - by fax or e-mail, confirmed by courier or registered mail, to the following addresses:

**EMC**

Evergreen Marine Corp., Ltd.  
No. 166, SEC.2  
Mingsheng East Road  
Taipei, Taiwan  
Attn: Business Coordination Dept. I  
Fax: +886-3-3123525

**APL**

American President Lines Co. Pte. Ltd.  
456 Alexandra Road  
#06-00 NOL Building  
Singapore  
Attn: Line Operations  
Fax: +65 371 64410

**HMM**

Hyundai Merchant Marine Co., Ltd.  
66, Chokson-Dong, Jongro-Ku  
Seoul  
South Korea  
Attn: Liner Strategy  
and Planning Dept.  
Fax: +82-2-732-8482

**MOL**

Mitsui O.S.K. Lines, Ltd.  
Shosen Mitsui Building  
1-1 Toranomom 2-Chome  
Minato-ku  
Tokyo- 105-8688

**Japan**

Attn: Liner Division  
Fax: +81-3-3587-7796

**ARTICLE 13. GOVERNING LAW AND ARBITRATION**

This Agreement and each Party's Bill of Lading shall be governed by and construed exclusively in accordance with the laws of the United States. Except as otherwise agreed, any dispute or claim arising under this Agreement which cannot be resolved amicably shall be resolved by arbitration in New York in accordance with the Rules of the Society of Maritime Arbitrators, Inc., before a single arbitrator familiar with ocean container shipping who shall have no financial or personal interest in or with any party and shall not have acquired a detailed prior knowledge of the matter in dispute. Within fifteen (15) days after any party serves a written

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demand for arbitration, the parties in dispute shall jointly agree upon an arbitrator of the aforesaid qualifications, failing which within five (5) days thereafter, they shall request the President of the Society of Maritime Arbitrators, Inc. to appoint an arbitrator.

**ARTICLE 14.**      **AMENDMENT**

Any modification or amendment of this Agreement must be in writing and signed by all Parties.

**ARTICLE 15.**      **NO AGENCY OR PARTNERSHIP**

Nothing in this Agreement shall give rise to, nor shall any group of Parties be construed as constituting, a partnership for any purpose or extent. Nor shall any Party or group of Parties be considered an agent of any other Party or group of Parties, unless expressly otherwise agreed for the limited purposes of specified matters or specified things done or not done under or in connection with this Agreement.

**ARTICLE 16.**      **ASSIGNMENT**

No Party shall be entitled to assign or transfer its rights or obligations under this Agreement, unless with the prior consent of all other Parties.

**ARTICLE 17.**      **SEVERABILITY**

Should any term or provision in this Agreement be held invalid, illegal or unenforceable, the remainder of this Agreement, and the application of such term or provision to persons or circumstances other than those as to which it is invalid, illegal or unenforceable, shall not be affected thereby; and each term or provision of this Agreement shall be valid and enforceable to the full extent permitted by law.

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**ARTICLE 18.**      **LANGUAGE**

This Agreement and all notices, communications or other writings made in connection herewith, shall be in the English language. No Party shall have any obligation to translate such matters into any other language and the wording and meaning of any such matters in the English language shall govern and control.

AMENDMENT

Having agreed, pursuant to the terms of Federal Maritime Commission Agreement No. 011756, New World Alliance/Evergreen Slot Exchange Agreement, to the foregoing amendment to Article 6.B of said Agreement, American President Lines, Ltd., APL Co. Pte. Ltd., Hyundai Merchant Marine Co., Ltd., Mitsui O.S.K. Lines, Ltd. and Evergreen Marine Corp. (Taiwan) Ltd. have caused this amendment to be executed by their duly authorized representatives as of the date stated below.

AMERICAN PRESIDENT LINES, LTD.

Name:

Title:

Date:

APL Co. Pte. Ltd.

Name:

Title:


Date:

  
Hyundai Merchant Marine Co., Ltd.

Name: Eliot J. Halperin

Title: Attorney-in-Fact

Date:

  
Mitsui O.S.K. Lines, Ltd.

Name: Charles F. Warren

Title: Attorney-in-Fact

Date:



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FMC Agreement No. 011756-002

\_\_\_\_\_  
Evergreen Marine Corp. (Taiwan) Ltd.


Name:


Title:

Date:

AMENDMENT

Having agreed, pursuant to the terms of Federal Maritime Commission Agreement No. 011756, New World Alliance/Evergreen Slot Exchange Agreement, to the foregoing amendment to Article 6.B of said Agreement, American President Lines, Ltd., APL Co. Pte. Ltd., Hyundai Merchant Marine Co., Ltd., Mitsui O.S.K. Lines, Ltd. and Evergreen Marine Corp. (Taiwan) Ltd. have caused this amendment to be executed by their duly authorized representatives as of the date stated below.

  
AMERICAN PRESIDENT LINES, LTD.  
Name: Eric C. Jeffrey  
Title: Authorized Signatory  
Date: November 9, 2004

  
APL Co. Pte. Ltd.  
Name: Eric C. Jeffrey  
Title: Authorized Signatory  
Date: November 9, 2004

\_\_\_\_\_  
Hyundai Merchant Marine Co., Ltd.  
Name: Eliot J. Halperin  
Title: Attorney-in-Fact  
Date:

\_\_\_\_\_  
Mitsui O.S.K. Lines, Ltd.  
Name: Charles F. Warren  
Title: Attorney-in-Fact  
Date:

New World Alliance/Evergreen Slot Exchange Agreement

(Second Addition)

FMC Agreement No. 011756-002

Paul M. Keane

Evergreen Marine Corp. (Taiwan) Ltd.

Name: PAUL M. KEANE

Title: Attorney-in-fact

Date: 11/9/04